

STATEMENT  
OF  
WILLIAM A. BRANIGAN  
AND  
WILLIAM V. CLEVELAND  
SOCIETY OF FORMER SPECIAL AGENTS OF THE FBI  
  
BEFORE THE  
  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
  
CONCERNING  
  
PROPOSED AMENDMENTS TO THE  
FEDERAL TORT CLAIMS ACT  
  
H. R. 595  
  
APRIL 28, 1983

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Mr. Chairman:

The Society of Former Special Agents of the FBI strongly supports remedial action proposed in H. R. 595. We feel that it is urgent that action be taken in this session of Congress to correct inequities that have resulted from Bevins-type cases since 1971. The Justice Department has estimated that cases currently pending involve 7,500 to 10,000 government employees.

In January 1983 Alan and Margaret McSurely were awarded 1.6 million dollars in connection with a raid conducted over 15 years ago. \$218,260 was assessed against the estate of former Senator John McClellan whose Senate Subcommittee was investigating the causes of urban disorders in the mid-1960s. The estates of two former Senate aides were assessed nearly \$190,000.

As an outgrowth of that case, the McSurelys are presently suing George W. Hutchison, a retired FBI Agent for \$350,000. When a deposition was taken from Special Agent Hutchison, he got the impression that they were probing for the names of additional Agents who may have investigated the McSurelys so they could sue them as well. Incidentally, Hutchison's "crime" was that he coordinated the report on the McSurelys. He conducted none of the investigation.

Another case currently pending appeal is Hobson vs. Wilson, relating to FBI counterintelligence programs initiated in the late 1960s. This case started in 1976. In December 1981 plaintiffs were awarded damages in the amount of \$252,500 against 4 former Special Agents of the FBI and one current Special Agent. In the same case attorneys fees in the amount of \$500,000 have been requested.

There is pending in the Southern District of Texas a suit by Frank and Belinda Lugo against Joseph E. O'Connell, former Special Agent in charge of the San Antonio office until his retirement in 1978. This suit seeks compensatory damages in the amount of 5 million dollars and punitive damages in the amount of 10 million dollars. Mr. O'Connell says he retired 3 months after the investigation was started, never directly supervised the case and recalls very little about the case.

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A 30 year veteran of the Forest Service supervised the removal of garbage and scrap metal from a mining site in the good faith belief he was doing his job. Two years later he was sued for \$48,000 in compensatory damages and \$100,000 in punitive damages. Three years later the court awarded the plaintiff \$1,000 in compensatory damages plus \$216.50 in court costs. The case was appealed.

The Forest Ranger subsequently testified before a Senate Committee that the lawsuit had an effect on his ability to make independent decisions: "The unsettled suit has been an ominous cloud over my personal and financial situation for over 8 years. Even worse than the possible financial damage, is the uneasy feeling I get each time that I make a decision . . ." (See Congressional Record 3-1-83, S1874)

Judge William H. Webster, Director of the FBI, testified on 2-4-82 "My problem today is not unleashing the FBI; my problem is convincing those in the FBI that they can work up to the level of our authority. Too many people have been sued, too many people have been harassed and their families and life savings tied up in litigation and the threat of prosecution. So that we and others like us run the risk that we will not do our full duty in order to protect our individual selves."

Mr. Chairman, attached is a "Position Statement" supported by the 8,000 members of the Society of Former Special Agents of the FBI, urging that Bills amending the Federal Tort Claims Act be passed at the earliest possible time.

Also attached is a list of organizations which support the passage of H. R. 595. Although the list does not purport to be all inclusive, it represents better than 90% of all law enforcement and intelligence organizations as well as representatives of large segments of government employees.



SOCIETY OF FORMER SPECIAL AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, INC.  
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POSITION STATEMENT

PROPOSED AMENDMENTS TO THE FEDERAL TORT CLAIMS ACT

The Society of Former Special Agents of the FBI is concerned about a situation that is unjust to current and former Special Agents of the FBI as well as other government employees.

The Supreme Court ruled in 1971 in Bivens vs. six unknown narcotics agents that a person who feels wronged by the government can personally sue the government employee. This means that federal workers can be held personally liable for money damages for acts taken while attempting to perform their duty.

Since 1971, thousands of government employees have been taken to court and there are presently pending cases involving some 10,000 public servants. In December 1981 one present and four former FBI Agents were held liable for \$262,500 for alleged violations of First Amendment rights relating to FBI counterintelligence programs initiated in the late 60s and 70s. This, plus some \$500,000 in attorney fees being claimed by the prosecution, could cause financial ruin for the five individuals.


The Society of Former Special Agents of the FBI is seriously concerned about this and other cases pending like it. They have a chilling effect on current FBI Agents, causing them to hesitate to take appropriate action for fear it might subject them to personal liability.

There are Bills pending in both houses of Congress which would make the government, not the employee, the defendant in Bivens type cases. The Justice Department has indicated that of the thousands of suits filed since 1971, a large percentage seem to be of a personally vindictive nature. Removing the employee as a defendant will destroy the motive for filing vindictive suits. The Bills pending do not remove a citizen's legal recourse if wronged by the government, but simply substitute the government as defendant.

At the request of the Board of Directors and on behalf of the 8000 members of the Society of Former Special Agents of the FBI, I urgently recommend that Bills amending the Federal Tort Claims Act be passed at the earliest possible time, thus protecting government employees from personal liability when they are acting within the scope of their employment. For those who violate their public trust, discharge or discipline is the appropriate penalty.

No other group of employees is personally exposed to the danger of financial ruin, because private sector employers are jointly liable for actions taken by their employees within the scope of their employment. We are merely seeking for FBI Agents and other government employees the same protection that our fellow citizens have.

Respectfully submitted for the Society

  
Lee O. Teague, President



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ORGANIZATIONS WHICH SUPPORT PASSAGE

OF HR-595 AND S-633

American Bar Association - Standing Committee on Law and National Security  
American Security Council  
American Society for Industrial Security  
Armed Forces Electronics and Communications Association  
Association of Federal Investigators  
Association of Former Intelligence Officers  
Association of Former Secret Service Agents  
Central Intelligence Agency Retirees' Association  
Consortium for the Study of Intelligence  
FBI National Academy Association  
FBI Agents Association  
Federal Criminal Investigators Association  
Federal Executive and Professional Association  
Federal Managers' Association  
Federal Physicians' Association  
Fraternal Order of Police  
Hale Foundation  
Interagency Law Enforcement and Intelligence Organization  
International Association of Chiefs of Police  
International Union of Police Associations  
Law Enforcement Assistance Foundation  
National Association of Federal Veterinarians  
National Association of Police Organizations  
National District Attorneys' Association  
National Intelligence Study Center  
National Law Enforcement Council  
National Military Intelligence Association  
National Strategy Information Center, Inc.  
National Troopers' Coalition  
Olmstead Foundation  
Security and Intelligence Fund  
Senior Executives' Association  
Society of Former Special Agents of the FBI  
Victims' Assistance Legal Organization